

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 215 of 1985

with

SPECIAL CIVIL APPLICATION No 216 of 1985

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SPECIAL CIVIL APPLICATION No 217 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SURESH S SARAIYA

Versus

BANK OF BARODA

Appearance:

1. Special Civil Application No. 215 of 1985
MR KM PATEL for Petitioner
MR DARSHAN M PARIKH for Respondent No. 1
MR BHARAT J SHELAT for Respondent No. 2, 3
2. Special Civil ApplicationNo 216 of 1985
MR KM PATEL for Petitioner
MR DARSHAN M PARIKH for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/02/2000

COMMON ORAL JUDGEMENT

#. These petitions have been filed by different petitioners by obtaining permission of the Court to file the same in representative capacity under Order 1 Rule 8 of Civil Procedure Code. The petitioners are the officers of the Bank of Baroda. They have filed the aforesaid petitions under Articles 14 and 16 of the Constitution read with Article 226 of the Constitution challenging the Regulation 7 of the Bank of Baroda (Officers) Service Regulations, 1979 [hereinafter referred to as 'the Regulations'].

#. The petitioners abovenamed have been employed in the employment of the respondent. So far the first two petitions are concerned, the petitioners were employed as Clerk whereas, the petitioner of third petition was appointed as Officer directly.

#. So far as the first two petitions are concerned, the petitioners were appointed as Clerks and they were promoted in the cadre of Officer. There is no serious dispute about the aforesaid facts of the case. The petitioners have contended that till November, 1980 when standardisation of service conditions of the officers was carried out pursuant to the "Pillai Committee Report", the respondent bank had the policy entitling an employee to switch over to next higher pay scale on reaching the last stage in pay scale notwithstanding his designation.

#. The petitioners have contended that before the standardisation of service condition in November, 1980, there was no promotion policy so far the respondent bank is concerned. That the pay scale for clerical staff from 1-7-1969 to 31-8-1978 was Rs.170 - Rs.550/-. That the pay scales of the clerical staff were revised by by-parte settlement with effect from 1st September, 1978. That the revised pay scale for the clerical staff was fixed at Rs.325 - 1040/-. That as against the pay scales of clerical staff as above, the pay scales of officers in Grade F, E, D and C prior to the appointed date were :-

Grade Scale

F 350-25-450
E 480-30-600 EB
D 640-40-800 EB
C 850-50-1050 EB

#. The petitioners have contended that when a clerk was promoted to the Officer's cadre, his fitment in the corresponding pay scale in the officer's cadre was carried out after adding Rs.91/- in his basic pay. That the efficiency bar in grades E, D, C and B for officers were never implemented in respect of any officer and they were allowed to switch over to the higher grade after reaching the maximum stage in a particular grade. As a result of that, when the clerk who is promoted as an officer subsequent to an officer who is recruited directly or promoted earlier drew more basic salary than the salary of his senior. An example has been given in the petition which reads as follows :-

"If X joins service as clerk earlier than Y, but if Y is promoted as Officer earlier, then basic salary of X would be more than Y although he is junior to Y as Officer. However, in the cadre of officers Y would be senior and X would be junior having regard to their respective dates of entry in the cadre of officers."

#. That the service condition of the officers including their pay scales, promotions and seniority came to be standardised in November, 1980. That the revised pay scale were given effect from 1-7-1979. That standardisation was implemented by enacting the Regulation Code namely "Bank of Baroda (Officers) Service Regulations, 1979". That the regulation 4 stipulates 7 different pay scales grouped under four different grades of officers and they are Junior Management, Middle Management, Senior Management. That rest of the grades comprise of two pay scales. That Regulation 6 provides for categorisation of every post of officer in any one of the grades or scale having regard to the responsibilities and functions exercisable by such officers. That for the said purpose, every branch of the respondent bank was required to be classified as small, medium, large or very large branch depending upon the volume of business. That the Central Government had issued guidelines in terms of Regulation 6 for categorisation of officers. That the Middle Management Grade in which the petitioner ought to have been fitted included the Managers of large and medium sized branch and the second line officers in large branches as well as region / area / division district and

like officers.

#. The petitioners have contended that at the time of standardisation in November, 1980, the petitioner of Special Civil Application No. 216 of 1985 was drawing salary of Rs.570/- in pay scale of Rs.480/- to Rs.600/-. That more than 300 officers junior to the petitioner were fitted in the Middle Management Grade Scale II in the pay scale of Rs.1200 - 2000/-. That about 20 clerks who were promoted as officers just 9 days prior to the appointed date of standardisation were fitted in the Middle Management Grade Scale II. The petitioner has referred and relied upon seniority list of officers in the Middle Management Grade Scale II.

#. The petitioners have further contended that since more than 300 officers junior to the petitioners discharging the same or similar duties were fitted in the Middle Management Grade Scale II, the petitioner ought to have been fitted in the said Grade and Scale. However, the petitioner was given fitment in the Junior Management Grade Scale I having pay scale of Rs.700 to Rs.1800/-. That on account of standardisation as above, anomaly has been created in such a way that the petitioners have been made subordinate of a person who had in fact worked under him. The petitioners have given example of Shri C. C. Chokasi who had worked under them and who was very much junior. However, on account of standardisation of cadres in officers, said Mr.Chokasi has been made senior to the petitioners according to the case of the petitioners.

#. The petitioners claims that on account of the aforesaid anomaly, the petitioners had preferred an appeal under Regulation 13 before the Deputy General Manager (Personnel) which was ultimately turned down by the said officer.

##. The petitioners further claim that during the pendency of the said appeal, the petitioners appeared for the departmental examination for the promotion to Middle Management Grade Scale II in November, 1982 subject to the result of the appeal.

##. The petitioners have therefore challenged the order of posting and also fitment given by the respondent in Junior Management Grade Scale I by way of Special Civil Application No.4963 of 1983. But the learned Single Judge upheld the order of posting. However, with reference to the grievance of the petitioners as to the fitment, the learned Single Judge directed the respondent Bank to decide and dispose of the appeal of the

petitioners against his fitment by February 28, 1984. Thus, the said Special Civil Application was accordingly disposed of at admission stage on 26th December, 1983.

##. The Letters Patent Appeal No.34 of 1984 against the order of the learned Single Judge filed by the petitioners was also dismissed by judgment and order dated 20th March, 1984 since the petitioners were brought back to Baroda zone from Calcutta Zone.

##. The petitioners claim that their departmental appeal has been turned down by the department saying that whatever done by the respondent was done in accordance with policy of the respondent.

##. That thereafter the respondent bank had issued a circular dated 14-2-1984 inviting applications for promotion to Middle Management Grade Scale III realising that the remedy will have to be provided against improper and unreasonable fitment flowing from Regulation 7. That even the policy was changed contrary to the guidelines issued by the Central Government.

##. The petitioners claim that Regulation 7 does not answer the requirements of Article 14 and 16 of the Constitution of India and it provides arbitrary, irrational and unreasonable criteria for fitment. It altogether ignores the duties and responsibilities and the seniority of the officers and therefore, they have contended that Regulation 7 is violative of Articles 14 & 16 of the Constitution of India.

##. It is further contended that the officers who were junior to the petitioners prior to the standardisation have been given fitment in the Middle Management Grade Scale II while the petitioners have been given fitment in Junior Management Grade Scale I and therefore, the petitioners have been subjected to injustice on account of the aforesaid anomaly created because of the standardisation policy. The petitioners have therefore, challenged the said policy and have prayed to declare Regulation 7 of the aforesaid Regulations as ultra vires Articles 14 and 16 of the Constitution of India. The petitioners have also prayed for issuance of a writ of mandamus and / or certiorari or any other appropriate writ, order or direction for quashing and setting aside the order of the Appellate Authority which is at Annexure-F to this petition. The petitioners have further prayed for direction to the respondent bank to give appropriate fitment to the petitioners to the Middle Management Grade Scale II with effect from 1-7-1979. It

is also prayed that the respondent bank be directed to promote the petitioners to Middle Management Grade Scale III pursuant to the interview held in May, 1984 and have also prayed that other reliefs as may be deemed fit by this Court may also be granted. At the initial stage, 'Rule' was issued and the petition was admitted. Leave to amend the petition was also granted on 21st January, 1985. The respondent made appearance on receipt of the notice of Rule. The affidavit in reply has also been filed.

##. It has been mainly contended on behalf of the respondent that regulations are perfectly legal and valid and same have been issued in accordance with guidelines issued by the Central Government. It is further contended that no policy can satisfy the sentiments of all persons from different corners and the petitioners have not been able to make out any case of discrimination. That therefore, the petitioners have no case in the present matter and therefore, their petitions be dismissed with costs.

##. I have heard the learned advocates for both the parties and have perused the record. Since all the petitioners carry similar and identical legal and factual disputes, they have been heard together and are being disposed of by this common judgment.

##. The original petitioner of Special Civil Application No.215 of 1985 has died and his legal representatives have been substituted in his place in terms of order passed in Civil Application No. 5449 of 2000 in Special Civil Application No. 215 of 1985. I may make it clear that whenever I refer petitioners, it would mean (original) deceased petitioner of Special Civil Application No.215 of 1985 and the petitioners of other two Special Civil Applications.

##. Undisputedly, the deceased petitioner of Special Civil Application No.215 of 1985 and the petitioner of Special Civil Application No. 216 / 1985 were initially appointed as clerk on 3-5-65 and 17-5-66 respectively. They were promoted to the officers' rank on 1-6-1970 and in May, 1971 respectively. The petitioner of Special Civil Application No. 217 of 1985 was directly appointed in Officer's rank on 17-4-1971 as an Agricultural Officer. These are the undisputed facts.

##. In fact, the factual aspects as aforesaid are not at all disputed before me even during the course of arguments.

##. Before going to the merits of the case, I may make it clear that these petitioners appear to have been filed by these three petitions in their personal and individual capacity at the first instance. At the same time, it also appears that the petitioners submitted applications for permission to file the petitions in representative capacity under Order 1 Rule 8 of Civil Procedure Code., 1908. Necessary orders appear to have been passed and notices appear to have been published in newspaper. However, none appeared before the Court in response to the public notices. Two employees likely to be affected by the orders, if any, which and if may be passed by this Court in these petitions in favour of the petitioners, have been joined as co-respondents. Mr. B. J. Shelat seems to have made appearance on their behalf. Yet, none appeared on their behalf as and when the petitions were called out for hearing and were actually heard after being duly notified for hearing more than once. Therefore, I have heard the learned advocate for the petitioners as well as for the Bank.

##. The issue which has arisen before me is a very short one. It is the petitioners' contention that though they were already in the officers' cadre and rank since 1970-71 as aforesaid and though several other persons promoted late in the officers' cadre and rank after 1970-71 and as such were junior to the petitioners in the Officers' cadre, were given fitment in a position higher than that of the petitioners, as a result of which, the juniors have become seniors to them.

##. It would be worthwhile to refer to Regulation 7 which has been challenged in this petition. It is placed at page 19 in Special Civil Application No.217 of 1985 and it can be reproduced as follows :

7. Subject to the provisions of regulation 6, the various posts of officers in the Bank on the appointed date shall be categorized as specified in the table below:-

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Posts/Grades of Officers immediately Grade in which
prior to the 1st July, 1979 placed.

(i) General Managers Top Executive Grade
Scale VII

- (ii) Deputy General Managers Top Executive Grade
and Chief Legal Adviser Scale VI
- (iii) Assistant General Senior Management
Managers Grade Scale V
- (iv) Regional Managers, Senior Management Grade
Chief Managers and Scale IV
Deputy Chief Officers
- (v) All Assistant Chief Middle Management Grade
Officers and all Offi- Scale III
cers and all officers
in 'A' and 'B' Salary
Grades (Other than
those fitted in Senior
Management Grade/Scales
IV & V)
- (vi) All Officers in 'C' & Middle Management Grade
'D' Salary Grades Scale II
(Other than those
fitted in Middle
Management Grade /
Scales III and above)
- (vii) All Officers in 'E' & Junior Management Grade
'F' Salary Grades Scale I.

The Assistant Chief Officers as on the appointed date will rank first in Middle Management Grade Scale III for the purpose of seniority over the others in that grade.

Provided that any difficulties and anomalies arising out of the above categorisation shall be referred to a Committee consisting of the Managing Director and such other persons as may be appointed by the Government for this purpose for its decision. "

##. On the other hand, the learned advocate for the respondent bank contended that the aforesaid regulations have been framed by the respondent bank on the strength of the guidelines issued in this behalf by the Union of India. The said guidelines have been produced in Special Civil Application No. 217 of 1985 at Page 17 and the said guidelines can be reproduced for ready reference as follows :-

The categorisation of posts in existence on the appointed date shall be done keeping the following criteria in mind :

- (i) The top executive grade would normally include all executive under the Managing Director such as General Managers, Joint General Managers, Deputy General Managers etc. The main criterion for this categorisation will be their share in the Policy making Review and Control functions of the Bank as a whole.
- (ii) The Senior Management grade would include Assistant General Managers and heads of functional departments in the Head Office exercising either operational or advisory responsibilities in both, policy-making and areas reserved for Head Office functions. Officers having full functional responsibilities for certain large geographical areas with supervision over a sizable portion of the Branches of the Bank, Managers of exceptionally large Metropolitan Branches and the principal officer responsible for Training will also be at this level.
- (iii) The Middle Management grade would include Managers of large and medium size branches. Second line officers in large branches as well as Region / Area / Division / District and like officers will also fall in this category.
- (iv) The Junior Management grade would comprise all other officers. It would include Managers of small branches and pay offices, Accountants or second line officers in small and medium branches and other offices.
- (v) In the cases of experts / specialists like Economists, Statisticians, Law Officers etc. as the role of all these officers vary from Bank to Bank, the grades of these officers will have to be determined by the Board on the basis of their experience, expertise and standing in their respective professions.
- (vi) The categorisation of posts as on the appointed date in each of the grades and scales (including that of the experts / specialists) should be done

in such a manner that as far as possible the aggregate of basic pay and D.A. of an official in the new scale bears a reasonable relationship to the aggregate of basic pay and D.A. drawn by an officer immediately prior to the appointed date.

(vii) Regarding classification of branches for the purpose of categorisation of Managers, the following norms shall generally be adopted.

EXCEPTIONALLY LARGE BRANCHES :

Average aggregate deposits and advance of Rs.10 crores and above.

LARGE BRANCHES :

Average aggregate deposits and advances of Rs.5 crores and above but below Rs.10 crores.

MEDIUM BRANCHES :

Average aggregate deposits and advances of Rs.1 crores and above but below Rs. 5 crores and the principal branches at District Headquarters / State Capitals.

SMALL BRANCHES :

All others.

The bank may, having regard to special circumstances obtaining at any branch, revise the gradation upwards or downwards as the case may be, for such branch. "

##. These are material documents which have been referred and relied upon by the parties for the purpose of decision in the matter.

##. Now it is the contention of the aforesaid petitioners that the fitment has been done in such a way that the officers who were senior in cadre and rank have become juniors and those who were junior have become senior. That this disparity has been created on account of the aforesaid regulation framed by the respondent bank. As against this, the learned advocate for the respondent bank has very vehemently contended that the respondent bank has framed the rules and regulation in accordance with law and guidelines issued by the Central

Government and there is nothing wrong with those guidelines. It is also argued on behalf of the respondent bank that when new formula has been framed then in that event such new policy and such new formula may not be in position to satisfy all the officers and employees of the respondent bank. That some persons might have to suffer and some persons might gain also. It is therefore his argument that unless it is shown and proved that the rules framed by the respondent bank are not reasonable or rational then in that event it would not be just and proper to assail those rules on the ground that the petitioners abovenamed have been put to loss on account of enactment of a new policy and new rules. It is not difficult to agree with the arguments advanced on behalf of the respondent bank that if the rules are rational or reasonable then in that event, it may not be possible for the Court to interfere with those rules which are based on the policy of the respondent bank. The matter of policy is after all a matter of discretion of the respondent bank and the court would not and should not interfere with such policy matter unless it is noticed that the policy is not rational and reasonable.

##. With a view to substantiate the said argument, the learned advocate for the respondent bank has cited certain decisions. The first is STATE OF RAJASHTAN AND ANOTHER VS. AMRITLAL GANDHI AND OTHERS (1972) 2 S.C.C. 342. There the appellant had introduced a new pension scheme with cut-off date. The contention of the respondent was that there could not be any cut-off date. That if a cut-off is introduced, then it would introduce discrimination between the employees in service on or after the cut-off date and those who have retired before the said date. There it was held that for the purpose of fixation of cut-off date paying capacity of the appellant State was relevant consideration and therefore, it could not be said that the cut-off date has been fixed arbitrarily.

##. Almost similar view was adopted in STATE GOVERNMENT PENSIONER' ASSOCIATION AND OTHERS VS. STATE OF ANDHRA PRADESH, AIR 1986 SUPREME COURT 1907. There also provisions for payment of larger amount with prospective effect from specified date in respect of gratuity was announced and it was held that this formula is not hit by the provisions contained in Article 14 of the Constitution of India. There the High Court had considered the same to be shocking and was carried away by the fact that an employee who retired even one day before the enforcement of the upward revision would not

get the benefit if the specified date of enforcement was not affected by striking down the relevant provision. The Supreme Court has observed that in all cases of prospective operation, it would be so. The Hon'ble Supreme Court further observed that just as one who files a suit even one day after the expiry of limitation would lose right to sue, one who retires even a day prior to enforcement of the upward revision would not get the benefit. This cannot be helped. The Hon'ble Supreme Court has also observed in the decision that in order to make it retrospective, so that it applies to all those who retire after the commencement of the Constitution on 26th January, 1950 and before the date of issuance of the notification on 26th March, 1980, the Court will have to rewrite the notification and introduce a provision to this effect saying in express terms that it shall operate retrospectively. The Court further observed that merely striking down the (or effacing) the alleged offending portion whereby it is made effective from the specified date will not do so. And this, the Court cannot do. The Court also found that giving prospective operation to such payments cannot, by any stretch of imagination, be condemned as offending Article 14.

##. Then we can take up another decision of STATE OF U.P. VS. U.P.UNIVERSITY COLLEGES PENSIONERS' ASSOCIATION, AIR 1994 Supreme Court 2311. There also pension was liberalized and similar view was adopted in that matter also. There Hon'ble Supreme Court has observed in para 8 "what should be extension of liberalisation should be matter of policy and if the Government decided to go as far as visualized by the G.O. of 28-4-80, it is not open to any Court to interfere with the same, as the policy contained in the G.O. cannot be said to be either unreasonable or against the public interest, which are the only two grounds available to a court to interfere with a policy matter while reviewing the same judicially.

##. Another decision of the Hon'ble Supreme Court can be gathered from the UNION OF INDIA VS. P.N.MENON reported AIR 1994 SUPREME COURT 2221. There the portion of dearness allowance was treated as part of pay under the Office Memorandum dated 25th May, 1979. The benefit of the said memorandum was extended to Government servants who retired on or after 30th September, 1977. The Hon'ble Supreme Court found that this was not arbitrary. That the fixation of the said cut-of date has nexus with price index level which was at 272 on this date. The Court further observed that no scheme cannot be full proof so as to cover and keep each and every person who

were one time in active service. As such, the concern of the court should only be, while examining any such grievance, as to whether the particular date for extending a particular benefit or scheme has been fixed on objective rational consideration.

##. In one another decision of the Hon'ble Supreme Court in STATE OF HARYANA AND OTHERS VS. RAMCHAND JAIN AND OTHERS, AIR 1997 Supreme Court 2691, the Government decided to grant selection grade. There the Government directed the fixation of 38 months as period of payment of arrears. The Hon'ble Supreme Court held that it was not arbitrary action on the part of the State. It was also observed that it is for the Government to decide as part executive policy as to from which date arrears would be granted to employees. That this being executive policy in character, it could not be said to be arbitrary.

##. In cases before me, the date of application of new policy and formula is not relevant for consideration. Reasonableness of the Policy is in challenge which has no nexus with the date of its operation.

##. The petitioners' contention is that it so happened that the clerk who was promoted as Officer subsequent to promotion of the petitioners in the cadre of the officers, has been placed above the petitioner on the sole consideration that the pay of the junior officers on the relevant date was higher than the pay of the petitioners.

##. Now it so happens that the clerk having put in a very long tenure as clerk in the respondent bank may get higher salary than the officers who might have been directly appointed as officer or an officers who may be junior in the cadre of clerk but who might have been promoted early in time. Thus, the officers would naturally rank above the subsequently promotees as officers. However, the officer who had long tenure as clerk may be getting higher salary than the senior officers. It is more so when the respondent bank has policy of switching over without any stagnation. It has been on agreed position before me that the respondent bank had no stagnation and the policy was that as soon as the person would reach maximum pay in a given pay scales and in a particular cadre, that he would not stand on stagnation at that particular pay but he will switch over on higher pay scales. This would mean that if the clerk is employed in pay scale of Rs.100 - 20 - 300 and if the

clerk has reached maximum pay of Rs.300/- and if he does not get promotion in higher rank or grade, then in that event, the said clerk would start getting salary in the pay scale which may be next higher to the aforesaid pay scale. This would mean that the said employee would not stand on stagnation at Rs.300/- but he would start earning in next higher pay scale on reaching the maximum at Rs.300/-.

##. In the aforesaid view of the matter, it would be clear that a person having long tenure will get more salary than the salary of the officers newly recruited or subsequently appointed and early promoted.

##. In the present case, it has so happened that there were certain persons who were junior to the petitioners in the rank of clerks. However, the petitioners were promoted early in time and those were promoted thereafter. The result was that the petitioners were senior as officers than those subsequently promoted. One of the petitioners was directly recruited as officer but other clerks had been subsequently promoted in the cadre of officers. However, they all stood junior to the aforesaid petitioners who was directly appointed as Officer since in the promotion was subsequent to the date of direct recruitment of the aforesaid petitioner as officer. Any way, it is an admitted position that all the petitioners in these petitions were senior to many junior officer who were subsequently promoted in the cadre of officers subsequent to the date of the promotion or direct recruitment of the petitioners in the said officers grade. There is absolutely no dispute between the parties with respect to the aforesaid state of affairs.

##. Since the aforesaid junior officers were senior as clerk since they were recruited much earlier, their salary in the cadre of clerk was more than the salary of the petitioners in the cadre of clerk. Same way when the petitioners were promoted or directly recruited as the case may be, their salary continued to be less than the salary of the said clerks. There is no dispute about this state of affairs. Thereafter, those clerks were promoted as the officers but their pay was maintained and therefore, even in the cadre of officers, though they were junior to the petitioners, their salary was higher than the salary of the petitioners. There is no dispute about this factual aspect during the course of arguments advanced on behalf of the parties. This clearly means that the petitioners were getting salary less than the salary of subsequently promoted officers.

##. At that point of time, new policy was adopted and fitment was done. It is also an undisputed position that on account of the aforesaid policy introduced as aforesaid and in view of the fitment done by the respondent bank as aforesaid position has come into being. It is also an admitted position that seniors have become juniors and juniors have become seniors. There is also no serious dispute about the same.

##. It is also by and large an admitted position that the aforesaid anomaly has come into being because of the fact that pay and not the pay scales or seniority governs the position. Therefore, if a person gets higher pay, he will be placed on higher side and if the person gets less pay then he will be placed in lower rank or grade. If the persons are in one grade or rank, then the person getting more salary is placed above the person who gets less salary. This appears to be on account of the implementation of the regulation code namely Bank of Baroda (Officers) Service Regulation, 1979.

##. It has been contended that the aforesaid position has come into being on account of the aforesaid Regulation 7 which has been referred to hereinabove. Now it appears that Regulation 7 simply says that this regulation is operative subject to the regulation 6. Regulation further says that various position of officers in the respondent bank on the appointed date shall be categorized as specified in the table shown in the said regulation. The table shows that the General Managers are to be placed in top Executive Grade Scale 7 and the Deputy General Manager and the Chief Legal Officers are required to be placed in the top Executive Scale 6. Last in the table is officer in E & F officers grade and they are placed in Junior Manager Grade Scale 1. This is a table attached to the Regulation -7.

##. The main defence of the respondent bank is that this is done pursuant to the guidelines issued by Union of India. The said guidelines have also been reproduced for ready reference. It would be seen that guidelines VI say that categorisation of post as entitled in each of the grades and scales (including that of the experts and specialists) should be done in such a manner that as far as possible the aggregate of basic pay and dearness allowance of any official in the new scale bears a reasonable relationship to the aggregate of basic pay and D.A. drawn by an officer immediately prior to the appointed date.

##. The aforesaid instructions never say that the pay would govern status and not the pay scales. The guidelines also do not say that the officers who are otherwise senior should be considered junior to their junior if getting less amount of salary on the appointed date. Neither the guidelines nor Regulation 7 says that if an officer is senior in rank and cadre, but gets less amount of salary then, he should be placed below his junior in the cadre and rank. Therefore, neither the rules nor regulation nor guidelines go to show that the seniority is to be fixed on the basis of actual salary received by a particular officer on the appointed date.

##. Even otherwise, the fixation of seniority which would amount to placement to a particular fitment cannot be done solely on the basis of the salary received by a particular officer on the appointed date. In other words, the actual amount of salary on the appointed date cannot govern the fitment.

##. Guidelines have also been issued and they are placed at page 23. They are issued by the Union of India. Even the guidelines at Sr.No.4 on page 24 speaks about the inter-se seniority and it says that the fitment has to be done having due regard to inter-se seniority.

##. Similar is the position with respect to regulations and particularly Regulation 18 placed at page 30 to the petition. Rule 18 (2) (3) (4) and (5) of Rules state as follows :-

"(2) Seniority of an officer in a grade or scale shall be reckoned with reference to the date of his appointment in that grade or scale. Where there are two or more officers of the same length of service in that grade or scale, their inter-se seniority shall be reckoned with reference to their seniority in the immediately preceding grade or scale or the previous cadre to which they belonged in the Bank's service. Where two or more officers have the same length of service in such preceding grade or scale or such previous cadre, their seniority shall be determined with reference to their seniority in the immediately preceding grade or scale or cadre, as the case may be.

(3) The inter-se seniority of officers directly recruited in a batch to any grade or scale shall be reckoned with reference to the rank allotted to them at the time of such

recruitment.

(4) In the case of an officer whose probation has been extended, his seniority shall be reckoned just below all the officers, if any, recruited or promoted in the same batch along with him.

(5) Nothing in this regulation shall affect the seniority amongst themselves of the officers as existing immediately prior to the appointed date."

##. Thus, the provisions make it clear that seniority in a particular grade or rank will govern the position. It has no nexus with the salary received by a particular officer on the appointed date.

##. However, the respondent bank has adopted a practice to apply the rules and regulations and guidelines of the Union of India in such a way that the seniority has been disturbed. In other words, the seniority which was there as on the appointed date amongst the officers working in the respondent bank, has completely been changed on and from the appointed date. Initially the seniority was reckoned on the strength of the entry of individual in a particular grade or rank. However, on and from the appointed date, date of appointment or promotion has been given a go by and instead, the salary received by an individual on the appointed date, has been made basis for maintaining seniority in that particular rank or grade. On account of introduction of this practice, the position has been changed and the persons getting more salary become seniors to their juniors who might be getting less amount of salary on the appointed date.

##. I am of the view that this policy cannot be said to be reasonable and rational. A person senior to his junior cannot become junior to his junior merely on the basis of the salary. In the same way, the junior officer cannot become senior to his senior simply because of his salary on the appointed date is more than the salary of his senior. Seniority is to be based on and from the date of the promotion or on and from the date of entry in that particular cadre.

##. If therefore, the petitioners have been promoted in the officers cadre in 1970 and if some other persons like respondents No.2 & 3 have been promoted as Officers in Officers' cadre subsequent to the said date of 1970, then the petitioners are entitled to be shown as senior to

those subsequently promoted to that cadre, even if those junior are getting salary more than the salary of the petitioners. In other words, simply because those junior officers are getting more salary than the salary of the petitioners as on the appointed date, they cannot claim seniority over the petitioners only on the sole consideration that on the appointed date, their salary was more than the salary of the petitioners.

##. In the present case, it is found that on account of the implementation of the policy of the respondent bank in the aforesaid manner, the seniority amongst the officers has been completely and substantially changed and the sole basis is salary on the appointed date. I am of the clear decision that the practice to fix the seniority amongst the officers of the respondent bank solely on the basis of the salary of these officers on the appointed date is illegal and unconstitutional. Difference in salary cannot change the seniority.

##. The learned advocate for the respondent bank has extensively argued that even if the petitioners have suffered some loss, it happens in all cases of new policy. It is not possible to agree with said argument. Even if some persons are required to suffer on account of implementation of new policy, the policy must be reasonable and rational. I am of the view that the policy or practice fixing the seniority on the basis of the salary and not on the strength of the seniority on the appointed date cannot be treated or said to be reasonable or rational.

##. It has also been argued that if Regulation -7 is struck down then no further order can be passed by this Court since the the respondent bank may be required to frame new regulation and till then, the petitioners cannot be considered for any further promotion. This is not acceptable when wrong appears to have been done and when it has been immediately challenged by way of writ petition in representative capacity. In that event, the present position is required to be altered and the respondent bank is required to be directed to consider the case of the petitioners for appropriate fitment as on the appointed date for in accordance with their seniority as on the appointed date irrespective of the salary received by the petitioners on that date.

##. There is no dispute that the aforesaid decisions are in favour of the cut-off dates. It is also not disputed that when the new policies are framed and new formula has been laid down, some persons may have to suffer and also

such schemes may not be totally full proof. There is no dispute as to those principles but here the position is quite different. There was no dispute about seniority on or before the appointed date and everything started after the appointed date. As stated above, seniority has been reckoned on and from the appointed date solely on the strength of the salary received by the officers on that date. This has disturbed the position and disturbed the seniority amongst the officers.

##. There is nothing wrong if on application of new revised rules of salary, the new pay scales should have been fixed on the basis of the old pay scales. Normally it is drawn as pay scales to pay scales fixation. If this is done then, the persons getting more salary will continue to get more salary even on application of new pay scales. But seniority cannot be claimed on the basis of the more salary. The position is different when the seniority is changed on the basis of salary earned. Here something has happened on account of adoption of the new policy and at that time, seniority has been fixed on the strength of salary. There is no dispute between the parties on this aspect of the case. However, persons have been affected by the application of the aforesaid policy in the aforesaid manner. Cases of such persons can be found at Annexure-C at page 28 of Special Civil Application No.217 of 1985.

##. As stated above, Regulation 7 does not speak in so many words that the seniority shall be fixed on the basis of the salary earned on the appointed date. Therefore, it is not very much necessary to strike down Regulation 7. At the same time, the policy has been introduced in such a manner that the salary has become governing factor. Therefore, it would be appropriate to pass appropriate orders in substantial interest of justice as I find that the manner of introduction of new policy is not reasonable and rational.

##. It appears that the appeal was preferred and as per the Annexure-F dated 8-4-1983, the appeal was dismissed on the ground that the appeal in the decision is in accordance with law. This can be gathered from the letter addressed to the petitioner Shri S. S. Saraiya dated 8-3-1984 issued by the respondent Bank. This shows that the petitioner for protecting his right preferred an appeal and the respondent bank has not considered the said aspect since the respondent bank has introduced the said formula from the appointed date on the basis of salary earned on the appointed date.

##. In aforesaid view of the matter, I am of the view that the petitioners are entitled to claim seniority on the basis of their seniority which was there on and before the appointed date. Result is that the aforesaid orders in appeal are also required to be quashed and set aside and the respondent bank is required to consider the case of the petitioners for fitment in Middle Management Grade Scale 2 with effect from 1-7-1979 on the strength of their seniority as on that date.

##. In aforesaid view of the matter, these petitions are allowed and the orders passed in Appeal by the Appellate Authority at Annexure-F dated 8-4-1984 are quashed and set aside. The respondent bank is hereby directed to consider the case of the fitment of the petitioners in Middle Management Grade Scale II with effect from 1-7-1979 on the basis of their seniority on that date in the officers Grade. Naturally and necessarily, if they are found to be fit for the said fitment in the said grade on that date, they shall be entitled to consequential reliefs regarding promotion, salary etc. as and when the same have become due to them and as and when their juniors in the same cadre earned the said benefits. It is made clear that the petitioner in Special Civil Application No.215 of 1985 has died and hence benefit available to him upto the date of his death will be made available to his legal representatives.

##. The petitions are allowed accordingly. Rule is made absolute accordingly. Considering the facts and circumstances of the case, there shall no order as to costs.

Date : 11-08-2000 [D. P. Buch, J.]

: FURTHER ORDER :

Mr.Darshan Parikh, learned advocate submits that with a view to enable the respondent Bank to consider filing of appropriate proceedings against this judgment, some time may be given to the Bank and in the mean time, the above order may be kept in abeyance.

Considering the facts and circumstances of the case, operative part of this judgment is stayed for a period of 8 weeks.

Date : 11-08-2000 [D. P. Buch, J.]

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